

May 19, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
12<sup>th</sup> Street Lobby, TW-A325  
Washington, DC 20554

Re: *Ex Parte Presentation*  
CC Docket No. 96-45

Dear Ms. Dortch:

On May 18, 2004, Paul Garnett, Director, Regulatory Policy and Christopher Day, Staff Counsel, CTIA – The Wireless Association™; Glenn Rabin, ALLTEL Communications, Inc.; Ben Almond, Cingular Wireless; and Peter Connolly, Holland & Knight, LLP, representing U.S. Cellular, met with Eric Einhorn, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau; Anita Cheng, Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau; and Vickie Robinson, Legal Advisor, Wireline Competition Bureau Front Office. During the meeting, the parties discussed concerns over recent revisions to FCC Form 499-A and Form 499-Q instructions that prohibit Commercial Mobile Radio Service (“CMRS”) providers from applying the interim wireless safe harbor to so-called “toll service charges.”

A number of Commission orders acknowledge that CMRS carriers lack the ability to precisely determine the jurisdictional nature of mobile wireless calls. The Commission therefore allows CMRS carriers to use traffic studies to approximate their interstate telecommunications revenues or apply a wireless “safe harbor” to report interstate telecommunications revenues. However, the Form 499-A and Form 499-Q instructions require that CMRS providers report the “actual amount of interstate and international revenues” for so-called “toll service charges,” rather than just reporting either the “safe harbor” amount or an amount determined by a traffic study.

CTIA and the other industry participants noted that the modified Form 499-A and Form 499-Q instructions improperly limit the scope of the wireless safe harbor and will result in recovery practices that are unreasonably expensive, administratively burdensome for carriers, extremely confusing for consumers, and inconsistent with direction provided in Commission orders. CTIA also pointed out that “toll service charges” is a fixed wireline concept that does not apply in the mobile wireless context. Accordingly, CTIA urged the Bureau to either clarify that “toll service charges” do not include mobile

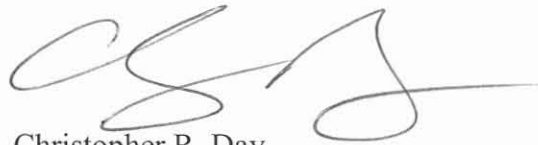


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wireless revenues or, to the extent that the Bureau believes that mobile wireless revenues include "toll service charges," modify the Form 499-A and Form 499-Q instructions to make clear that the safe harbor may be applied to all mobile wireless revenues, including so-called "toll service charges." CTIA noted that the Bureau has been delegated authority to modify form instructions to make them consistent with Commission orders.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter, along with all of the materials distributed at the meeting, is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "CR Day", with a long horizontal flourish extending to the right.

Christopher R. Day

Attachment

cc: Eric Einhorn  
Anita Cheng  
Vickie Robinson

**CMRS PROVIDERS SHOULD NOT BE FORCED TO  
REPORT ACTUAL REVENUES FOR “TOLL SERVICE” CHARGES**

- Prohibiting CMRS providers from applying the safe harbor to “toll service charge” revenues is inconsistent with Commission orders.
  - Reporting on a disaggregated basis “actual” intrastate, interstate and international revenues is optional for mobile wireless providers (FCC 98-278 ¶¶ 10-15; FCC 02-329 ¶ 24).
  - The Commission has recognized that mobile wireless providers continue to have difficulties identifying interstate telecommunications revenues for all categories of traffic, even when reporting “actual” revenues (FCC 03-20 ¶¶ 7-8). The Commission therefore permits carriers to conduct traffic studies when reporting “actual” interstate telecommunications revenue.
- Commission orders detailing appropriate universal service contribution recovery practices make clear that the safe harbor applies to all carrier telecommunications revenues (FCC 03-20 ¶ 8 nn. 24, 26). Misapplication of the safe harbor, contrary to Commission orders, will result in recovery practices that are unreasonably expensive, administratively burdensome for the carriers, and extremely confusing for customers.
  - Application of the Telecommunications Reporting Worksheet's misinterpretation of the Commission's orders concerning the wireless safe harbor rate would require wireless carriers to compute their pass-through charges as follows: [(Total telecommunications revenues) less (intrastate, interstate and international toll revenues) times (contribution factor) times (safe harbor rate)] plus [(interstate and international toll revenues) times (contribution factor)].
- “Toll Charges” is a fixed wireline concept that does not apply in the mobile wireless context.
  - The term “telephone toll service” means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. 47 U.S.C. § 153(48).
  - The Act’s “toll service” definition only refers to wireline networks where the originating and terminating points of a call are more easily ascertained.
    - In contrast, mobile wireless providers generally do not have the ability to determine intrastate, interstate, or international telecommunications revenues on a customer-by-customer or call-by-call basis. FCC 03-23 ¶ 8.



- As applied to mobile wireless providers, “toll charges” is not defined in the Act, Commission rules, or in the form instructions. It therefore may be appropriate for the Worksheet to be amended such that mobile wireless providers would report all their mobile wireless end-user revenues under lines 403, 409, and 410 of the Worksheet.
- The Bureau does not have discretion to substantively change the safe harbor without notice and comment. The Commission’s safe harbor was adopted and instituted to avoid the transactional, operational and financial burdens that the recommended application of the Worksheet’s instruction would trigger on the wireless industry.
  - The Commission’s delegation of authority to the Bureau to modify reporting requirements “extends only to making changes to administrative aspects of reporting requirements, not the substance of the underlying programs.” *See* FCC 99-175 ¶¶ 38-39.

